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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 GARY DAVID GOULIN,

16 Defendant.

No. 2:22-cr-00476-MEMF

JOINT STATUS REPORT

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18 Plaintiff United States of America, by and through its counsel
19 of record, the United States Attorney for the Central District of
20 California and Assistant United States Attorney Sarah S. Lee, and
21 defendant Gary David Goulin, by and through his counsel of record,
22 Mark J. Werksman, hereby submit this joint status report to address
23 two issues raised by the Court: (1) how the parties wish to proceed
24 since the Court rejected the parties' Rule 11(c)(1)(C) plea
25 agreement, and (2) the parties' calculation of excludable time under
26 the Speedy Trial Act.

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1 **PLEA AND PLEA AGREEMENT**

2 On April 6, 2023, the parties filed a plea agreement under
3 Federal Rule of Criminal Procedure 11(c)(1)(C) ("binding plea
4 agreement". (Dkt. 27.) On April 26, 2023, the Court held a change
5 of plea hearing and accepted defendant's plea to Count Two of the
6 indictment. At the change of plea hearing, the Court deferred the
7 decision whether to accept the parties' binding plea agreement.

8 On October 13, 2023, the time set for the sentencing hearing,
9 the Court informed the parties that it was rejecting the binding plea
10 agreement and gave defendant the opportunity to withdraw his plea
11 under Federal Rule of Criminal Procedure 11(c)(5). Defendant
12 indicated that he would not withdraw his plea at that time. The
13 government thereafter requested a continuance of the sentencing to
14 discuss a potential alternate resolution.

15 The parties have since met and conferred and filed a new plea
16 agreement, (Dkt. 44), as the binding plea agreement is null and void.
17 The parties request the Court set another hearing, at the Court's
18 earliest convenience. At that hearing, defendant intends to withdraw
19 his prior plea pursuant to Federal Rule of Criminal Procedure
20 11(d)(2)(A). The parties will then jointly request that the Court
21 conduct a new change of plea hearing pursuant to the terms of the new
22 plea agreement. The parties will then jointly request that the Court
23 immediately proceed with a sentencing hearing on the new plea.

24 The parties hereby agree that sentencing can proceed based on
25 the presentence report (Dkt. 33), the revised presentence report
26 (Dkt. 39), and any further revisions the Probation Office files prior
27 to the sentencing hearing. Defendant hereby waives the 35-day
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1 minimum period by which a new presentence report must be issued under
2 Federal Rule of Criminal Procedure 32(e)(2).

3 At this time, the parties do not expect to file any amendments
4 to their previously filed sentencing positions. The parties reserve
5 the right to file any additional sentencing positions or state their
6 objections at the sentencing hearing if further amendments are made
7 to the presentence report.

8 **SPEEDY TRIAL CALCULATION**

9 Defendant first appeared before a judicial officer of the court
10 in which the charges in this case were pending on December 13, 2022.
11 The Speedy Trial Act, 18 U.S.C. § 3161, originally required that the
12 trial commence on or before February 21, 2023. On February 14, 2023,
13 the Court ordered the time period of December 20, 2022, to June 6,
14 2023, inclusive, as excluded under the Speedy Trial Act. (Dkt. 23.)
15 On April 26, 2023, the Court accepted defendant's plea to Count Two
16 of the Indictment and vacated the trial date. (Dkt. 29.)

17 In light of the above, only 7 days -- the time period between
18 December 13, 2022 and December 20, 2022 -- have not been excluded
19 under the Speedy Trial Act. The parties further believe that time
20 under the Speedy Trial Act did not start to run after the Court's
21 rejection of the parties' binding plea agreement, as defendant has
22 not yet withdrawn his plea. See, e.g., United States v. Carter, 804
23 F.2d 508, 512 (9th Cir. 1986) ("Legislative history makes clear that
24 'where a defendant pleads guilty and then withdraws his plea ... the
25 time limits commence again on the day the plea is withdrawn.'").

26 Once defendant withdraws his previously-entered plea, the
27 parties believe time will re-start under the Speedy Trial Act, but
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1 anticipate defendant will then immediately enter a new plea pursuant
2 to the new plea agreement.

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4 Dated: October 20, 2023

Respectfully submitted,

5 E. MARTIN ESTRADA
6 United States Attorney

7 MACK E. JENKINS
8 Assistant United States Attorney
9 Chief, Criminal Division

10 /s/
SARAH S. LEE
Assistant United States Attorney

11 Attorneys for Plaintiff
12 UNITED STATES OF AMERICA

Dated: October 20, 2023

13 /s/ with email authorization
14 MARK J. WERKSMAN

15 Attorney for Defendant
16 GARY DAVID GOULIN
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